

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of Qwest's Petition
for Approval of 2007 Additions to
Non-Impaired Wire Center List

PREHEARING ORDER

This matter came on for a Prehearing Conference before Administrative Law Judge Richard C. Luis on January 28, 2008, at 9:30 a.m. in the Large Hearing Room of the Minnesota Public Utilities Commission (Commission), 121 Seventh Place East, Suite 350, St. Paul, Minnesota. The following persons appeared:

Joan C. Peterson, Corporate Counsel, Qwest Corporation, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, on behalf of Qwest Corporation (Qwest).

Dan Lipschultz, Attorney at Law, Moss & Barnett, P.A., 90 South Seventh Street, Suite 4800, Minneapolis, MN 55402-4129, on behalf of the CLEC Coalition.

Karen A. Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1500, St. Paul, MN 55101, on behalf of the Department of Commerce (the Department).

Kevin O'Grady, Telecom Analyst, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147, on behalf of the staff of the Commission.

Based on the discussions during the Prehearing Conference and all of the files and proceedings herein, the Administrative Law Judge makes the following:

ORDER

Parties and Petitions for Intervention

1. The Commission identified the parties to this matter as Qwest and the Department.¹ The CLEC Coalition, acting on behalf of DIECA Communications, Inc. d/b/a/ Covad Communications Company, Inc.; Integra Telecom of Minnesota, Inc.; McLeodUSA Telecommunications Service, Inc.; POPP.com, Inc.; TDS Metrocom; XO Communications of Minnesota, Inc.; and Eschelon Telecom, Inc., appeared at the Prehearing Conference, and is admitted as a party to this proceeding.

2. The final date for filing Petitions to Intervene as a full party is February 19, 2008. Any persons petitioning to intervene after that date may be restricted as to the scope of their participation. Any objection to a Petition to Intervene shall be filed within seven days of service of the Petition, in accordance with Minn. R. 1400.6200, subp. 2.

3. Any person who desires to remain on the service list as a non-party participant must file a notice of appearance by the intervention deadline of February 19, 2008. Any person who is not affiliated with a party or a participant will be removed from the service list after that date.

Schedule

4. The following schedule is adopted:

| | |
|---|-------------------|
| Intervention Deadline | February 19, 2008 |
| Discovery | Ongoing |
| Prefiled Direct Testimony and Motions on Active Power | March 14, 2008 |
| Replies on Active Power Issue | April 18, 2008 |
| Hearing on Active Power Motion | To be determined |
| Prefiled Rebuttal Testimony | To be determined |
| Evidentiary Hearing | To be determined |
| Briefing Schedule | To be determined |
| ALJ Report | To be determined |

Filing of Documents

5. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

¹ Commission Notice and Order for Hearing, at 6 (issued January 10, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4897441>).

6. All documents filed, including prefiled testimony, **but excluding information requests and responses**, shall be filed as follows:

a. Prior to the issuance of the Report of the Administrative Law Judge, the original of all documents shall be eFiled whenever possible. For those documents that cannot be eFiled, filing is accomplished by delivery or mailing to Richard C. Luis, Administrative Law Judge, P.O. Box 64620, Saint Paul, Minnesota 55164-0620.

b. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission, in accordance with the statutory requirements and Commission orders governing such filings.

7. Copies of all public documents shall be served on the persons listed on the attached service list, in the number indicated. It is expected that service generally will be made by eFiling, sending an electronic copy to the email addresses listed on the service list, and, where appropriate, a paper copy by U.S. mail. The service list specifies the manner for serving any particular party or person. Trade Secret Information and otherwise nonpublic documents shall be served upon persons in accordance with the limitations in this Order and with any Protective Order that may subsequently be issued. The service list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

8. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is eFiled, mailed by U.S. mail or delivered to the Administrative Law Judge or the Executive Secretary of the Commission.

9. Proof of service shall be filed with each filed document or within three business days thereafter. No proof of service of eFiling is required.

10. Trade Secret Information and other Nonpublic Data shall be transmitted by U.S. mail or courier, not by email. Trade Secret Information and other Nonpublic Data filed with the Administrative Law Judge or the Commission shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. That document is available at www.puc.state.mn.us/docs/tradsecret.pdf .

11. The court reporter shall be informed of any motions or proceedings affecting the schedule in this matter.

Discovery

12. Discovery shall be in accordance with Minn. R. 1400.6700 - 1400.6900 or by motion to the Administrative Law Judge.

13. Information Requests shall normally be made by email to the person from whom the information is sought and a copy shall be emailed to all parties. Information Requests containing references to other documents shall be sufficiently detailed to inform the other parties of the nature of the request. Information Requests and responses shall not be sent to the Administrative Law Judge or the court reporter.

14. The party responding to the information request shall provide the information requested to the requesting party within eight business days after receipt of the request. The information need not be supplied as a matter of course to all other parties unless specifically requested by a party. Information requests received after 3:00 p.m. on business days or at any time on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the ten-day period. If the ten-day period ends on a weekend day or state holiday, the response shall be due on the next business day. There shall be a continuing obligation to update and supplement responses to information requests.

15. In the event the information cannot be supplied within ten business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be made be heard by telephone conference among the Administrative Law Judge and affected parties.

16. To the extent that an information request or response includes material designated as Trade Secret Information or Nonpublic Data under the Minnesota Government Data Practices Act set forth in Chapter 13 of the Minnesota Statutes, the request or response is required only between the requesting and responding party. In such instances, the party providing the Trade Secret Information or Nonpublic Data may require that the other party comply with the terms of any Protective Agreement and Order issued in this matter. Trade Secret Information or Nonpublic Data shall, to the extent possible, be delivered or mailed to the requesting party so that it is received before the end of the ten-day period. If that is not possible, it shall be delivered or mailed to the requesting party so that it is received by the morning of the next business day.

Prefiled Testimony and Order of Testimony

17. Prefiled testimony shall be marked as an exhibit and offered for admission into the record at the hearing. A hard copy shall be provided for use at the hearing. The offering party shall provide the unique E-file identifying number of the exhibit in the eDockets database. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

18. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

19. Any amendments that are made at the hearing to exhibits will be subsequently entered into the eDockets system. A hearing exhibit list will be prepared that identifies and provides access to each public exhibit in the eDockets system. Trade secret documents will be identified, but no access will be provided. Changes made at the hearing will be identified, and access to the changes provided, through the hearing exhibit list. The documents identified on the hearing exhibit list constitute the record copies of those documents.

20. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearings shall be: Qwest, CLEC Coalition; intervenors, if any, in order of intervention; and the Department.

Examination of Witnesses

21. Witnesses shall be allowed ten minutes to summarize and update their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

22. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

23. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of the prefiled testimony of a witness shall be considered waived unless the objecting party states its objection by written motion made to the Administrative Law Judge and serves a copy of such objections on the parties no later than five days prior to commencement of the evidentiary hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to

shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

24. In the event that the parties agree to present this matter to the Administrative Law Judge on the basis of prefiled testimony and forego an in-person hearing, a telephone conference will be held to identify and number the hearing exhibits and establish a briefing schedule.

Hearing Procedure

25. The Administrative Procedure Act, Minn. Stat. §§ 14.57 – 14.62, and the Rules of the Office of Administrative Hearings, Minn. R. 1400.5100 – 14.00.8400, shall govern the conduct of the hearings in this matter. The Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed. To the extent that they are not superseded by the OAH rules, the Commissioner's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200, shall also apply. The Office of Administrative Hearings will arrange to have a court reporter present at the hearing. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript.

Request for Accommodation

26. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed

| | |
|-------------------------|---|
| Dated: February 6, 2008 | |
| | <u>/s/ Richard C. Luis</u> |
| | RICHARD C. LUIS Administrative Law Judge |